

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
Timothy E. Hoerman,)	Bankruptcy No. 20 B 01053
)	Chapter 11
)	
Debtor)	Judge Janet S. Baer

NOTICE OF MOTION

PLEASE TAKE NOTICE that on May 12, 2021, at 1:00 p.m., I will appear before the Honorable Janet S. Baer, or any judge sitting in that judge's place, and present the **Motion for Entry of Order of Contempt**, a copy of which is attached.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com>. Then enter the meeting ID.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828- 7666. Then enter the meeting ID.

Meeting ID and password. The meeting ID for this hearing is 160 731 2971 – Passcode 587656. The meeting ID and further information can also be found on Judge Baer's web page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

David P. Lloyd
615B S. LaGrange Rd.
LaGrange IL 60525
708-937-1264
Fax: 708-937-1265

CERTIFICATE OF SERVICE

I, David P. Lloyd, an attorney, certify that I caused a copy of the foregoing Notice and Motion to be served on the parties listed on the attached service list by electronic notice where indicated, or by certified mail, by depositing with the United States Postal Service, LaGrange, Illinois, postage prepaid, prior to 5:00 P.M., this 4th day of May, 2021.

/s/ David P. Lloyd

David P. Lloyd

Notice List
Timothy E. Hoerman
20 B 01053

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

- Sarah E Barngrover amps@manleydeas.com
- Patrick S Layng USTPRegion11.ES.ECF@usdoj.gov
- David P Lloyd courtdocs@davidlloydllaw.com
- Todd J Ruchman amps@manleydeas.com

Wells Fargo Bank, N.A.
c/o C. Allen Parker, CEO
101 N. Phillips Av.
Sioux Falls SD 57104
by certified mail

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
Timothy E. Hoerman,)	Bankruptcy No. 20 B 01053
)	Chapter 11
)	
Debtor)	Judge Janet S. Baer

MOTION FOR ENTRY OF ORDER OF CONTEMPT

NOW COMES the Debtor, Timothy E. Hoerman, by and through his attorney, David P. Lloyd, and moves this honorable Court for entry of an order of contempt against Wells Fargo Bank, N.A., and in support thereof states as follows:

1. The Debtor commenced this case by filing a voluntary Chapter 11 petition on January 4, 2020.

2. Among the creditors in this case is Wells Fargo Bank, N.A. which holds the first mortgage on the Debtor's residence.

3. The Debtor's Plan of Reorganization provides for payment of the Wells Fargo mortgage in full, with maintenance of the regular contractual payment on the mortgage, in the approximate amount of \$3,375.33/month, and cure of a pre-petition arrearage claim allowed in the amount of \$192,886.40, with quarterly payments of \$9,724.03 per quarter.

4. The Court entered an order confirming the plan on January 15, 2021.

5. The Debtor has tendered payment of every monthly mortgage payment, in the amount of \$3,375.33/month, due to Wells Fargo since confirmation of the Plan, and made the first quarterly payment of \$9,724.03 to Wells Fargo on February 11, 2021.

6. On March 24, 2021, the Court entered an order closing this case, with provision to reopen for entry of a discharge upon completion of all payments to unsecured creditors.

7. At the time of the filing of this case, the Debtor was a defendant in a mortgage foreclosure case in which Wells Fargo is the plaintiff, Case No. 15 CH 2021 in the Circuit Court for DuPage County, Illinois. That case was stayed by the filing of this case.

8. On April 6, 2021, Debtor's counsel wrote to Wells Fargo's counsel to ask that the foreclosure case be dismissed, as the confirmation of the plan reversed the acceleration of the mortgage loan and removed the grounds for the foreclosure. A copy of that email is attached hereto as Exhibit A.

9. Later on April 6, counsel for Wells Fargo sent a response to Debtor's counsel, bluntly refusing to dismiss the foreclosure. A copy of that email is attached hereto as Exhibit B.

10. On April 8, 2021, Counsel for Wells Fargo in the foreclosure sent an email to the Debtor, requesting discovery documents in the foreclosure case. A copy of that email is attached hereto as Exhibit C.

11. On April 13, 2021, Wells Fargo sent a mortgage statement to the Debtor and his spouse; a copy of the statement is attached hereto as Exhibit D. The statement contains exculpatory language stating that, if the recipient is in an active bankruptcy or has received a discharge, the statement is for informational purposes only; but as the Debtor was not in an active bankruptcy when the statement was sent, nor has he received a discharge, this exculpatory language does not apply to the statement.

12. The April 13, 2021, statement recites a Total payment amount of \$147,931.92 due on May 1, 2021. This term is not consistent with the confirmed plan, which requires \$3,375.33/month and \$9,724.03/quarter toward an arrearage of \$192,886.40.

13. On the third page of the statement appears a list of payments received by Wells Fargo. The payment of \$9,724.03 made by the Debtor in February of 2021 does not appear.

14. Wells Fargo is retaining funds of the Debtor without applying payments as required by the confirmed plan, and not disclosing the receipt of those funds.

15. Wells Fargo reports credit information to at least three credit agencies: Equifax, Experian, and TransUnion. Copies of the relevant portions of the credit reports from all three agencies, dated April 22, 2021, are attached as Exhibit E.

16. Wells Fargo has either reported inaccurate information, or allowed inaccurate information to remain, in regard to all three credit agencies, including a misstatement of balance due, incorrect information about the Debtor's bankruptcy status, and misstatement of default status. In addition, Wells Fargo has not reported payments received during the pendency of this case or after its closure.

17. The Debtor will be harmed by the ongoing failures of Wells Fargo to comply with the confirmed plan as follows: The Debtor will have to devote time and effort, and expend fees and costs, in defending the foreclosure case; and the Debtor's credit rating, and his ability to obtain financing or other credit opportunities, will be reduced, or available only at an increased cost.

18. The Debtor has retained David P. Lloyd as counsel to attempt to gain compliance from Wells Fargo and to pursue this motion for sanctions in the bankruptcy court. The fees and costs associated with these efforts and this motion are itemized as follows:

4/6/21	Email to Wells Fargo atty re: foreclosure	.2
4/6/21	Review email from Wells Fargo atty refusing to dismiss	.1
4/7/21	Additional research & correspondenc with client re: mtg	.8
4/8/21	Review email from Manley Deas to client re: fcl	.2
4/13/21	Email discussion re: possible motion for sanctions	.6
4/21/21	Review & analyze mortgage statement from Wells Fargo	.6
4/22/21	Draft declaration for client re: contempt motion	.5
4/22/21	Discussion with client re: contempt procedure	.4
4/23/21	Review credit reports forwarded by client	.6
4/30/21	Draft motion for contempt	1.0
5/4/21	Complete motion for contempt	.5
5/4/21	Prepare motion to reopen	.8

5/12/21 Attend court hearing on motion for contempt (Prospective) .3

TOTAL: 6.6 hours @ \$400/hour: \$2,640.00

19. As established above, the Debtors' actual damages to date for attorneys' fees and costs total \$2,640.00. Said damages resulted as a direct and proximate result of the intentional violation, by Wells Fargo Bank, N.A., of the confirmed Plan in this case, by pursuing litigation, demanding payment, and improperly reporting default status, after confirmation of the Plan.

WHEREFORE the Debtor, Timothy E. Hoerman, prays for an order of contempt against Wells Fargo Bank, N.A., and for compensatory and punitive damages against said respondent.

Respectfully submitted,
Timothy E. Hoerman

By: /s/ David P. Lloyd
Their attorney

David P. Lloyd, Ltd.
615B S. LaGrange Rd.
LaGrange IL 60525
708-937-1264
Fax: 708-937-1265